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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,682	10/27/2003	Joseph Wittmer	ATM-2360	2063
217 7590 07/11/2007 FISHER, CHRISTEN & SABOL 1725 K STREET, N.W. SUITE 1108 WASHINGTON, DC 20006			EXAMINER GEHMAN, BRYON P	
			ART UNIT 3728	PAPER NUMBER
			MAIL DATE 07/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/692,682

Applicant(s)

WITTEMER, JOSEPH

Examiner

Bryon P. Gehman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-15 is/are pending in the application.
- 4a) Of the above claim(s) 6-9, 12 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 10, 11, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/7/07 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The amendment filed June 7, 2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The statement that "The front wall and the back wall do not contain any holes" is considered new matter, as such is a negative limitation which precludes holes, which the original specification did not disclose as being precluded, and was not generated by applicant's original disclosure, but by the pertinent prior art. While it is clear that there are no holes in the disclosed walls, the original specification does not preclude holes per se, anymore than it precludes sundry other elements it does not include. Applicant may define the walls as being "continuous and uninterrupted", which is a positive statement of the structure originally disclosed.

Applicant is required to cancel the new matter in the reply to this Office Action.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-3 and 10-11 are finally rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application

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was filed, had possession of the claimed invention. In claim 1, lines 5-6, the limitation "do not have any hole therein" is a negative limitation precluding holes, which was not contemplated by applicant by his original disclosure. Applicant should positively define his walls such as by --are continuous and uninterrupted--.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-3 and 10-11 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 8, "substantially the entire area" is indefinite, as such encompasses all but an insignificant part of the area, and leaves no area for the subsequently defined "remaining portion". The phrase "substantially the entire area" should be --a substantial portion--, to indicate there are two portions of significant area.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 1-2, 5, 10 and 14-15 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Counts et al. (5,341,930) in view of Kaufmann (5,389,415). Counts et al. disclose a packaging bag (Figures 1 and 2) with a front wall (14) and a rear wall (12) in which the front wall and rear wall are bonded together along a peripheral edge (column 6, lines 39-47), each of the front wall and the rear wall being continuous and uninterrupted so as to not have any hole therein, at least one of the front wall and rear wall bonded to a cover film (16) which is printed on one or both sides, substantially the entire area of the cover film being bonded to and peelable from the at least one of the front wall and rear wall, and at least one of the front wall and rear wall of the packaging bag printed on the outside of the bag (at 20). Kaufmann disclose a substantial portion of a cover film (2) bonded to and peelable from a package and a remaining portion (5) of the cover film permanently bonded to a packaging bag in an edge area. To modify the packaging bag of Counts et al. employing the peelable and permanent seal combination teaching of Kaufmann would have been obvious in order to permanently retain the cover film with the bag, yet allow its partial peeling to ascertain text hidden beneath the cover film, as suggested by Kaufmann.

As to claim 2, Counts et al. disclose a first packaging film (14), a second packaging film (12) and a cover film (16).

As to claim 10, Counts et al. disclose bonding of the cover film in an edge area.

As to claim 14, Kaufmann further disclose employing permanent adhesive (see column 2, lines 43-55).

As to claim 15, since the prior art combination discloses printing in general, and applicant discloses register printing to be known in the field, to employ the commonly known register printing process would have been obvious to one of ordinary skill in the art and would fail to define any new and unexpected result by its employment.

8. Claims 3 and 11 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above, and further in view of Muir Jr. et al. (6,767,604). Muir Jr. et al. disclose the front wall and the rear wall of a similar bag being of the same packaging film by folding (see column 3, lines 46-61). To provide the front and rear walls of Counts et al. as folded portions of the same material would have been obvious, as it is well-known in the bag field to provide a bag by folding a single sheet, as disclosed by Muir Jr. et al..

9. Applicant's arguments with respect to claims 1-3, 5, 10-11 and 14-15 have been considered but are moot in view of the new grounds of rejection.

Applicant appears to believe that any modification of one reference with the teaching of another "destroys" the modified reference. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The examiner maintains that it would have been obvious to provide a permanent seal to the structure of Counts et al.

as taught by Kaufmann in order to maintain the cover film with the packaging, as suggested by Kaufmann. To modify an existing reference invention with an improvement thereto already recognized in the art does not "destroy" the existing invention in this case, any more than replacing my old frayed carpet in my living room with hardwood floors was unobvious to me, nor would it destroy my existing house by so doing.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG



New Sheet

*Approved
7-9-07*

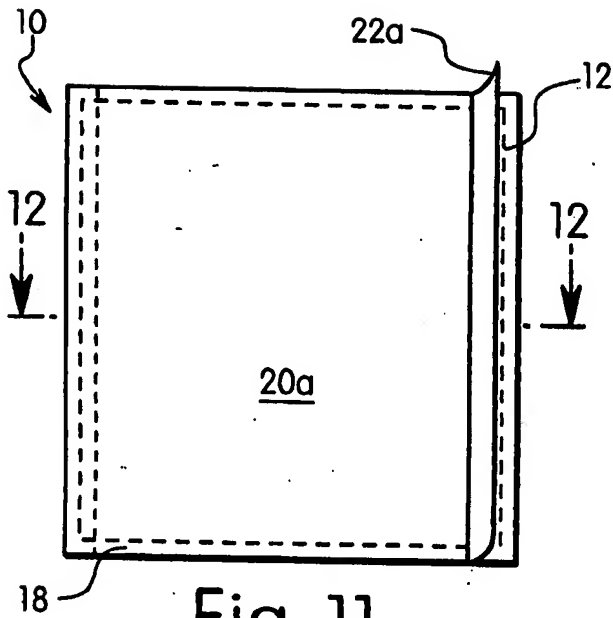


Fig. 11

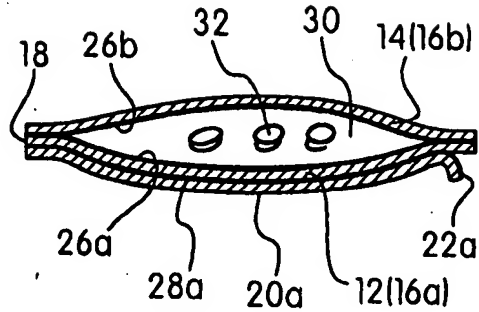


Fig. 12

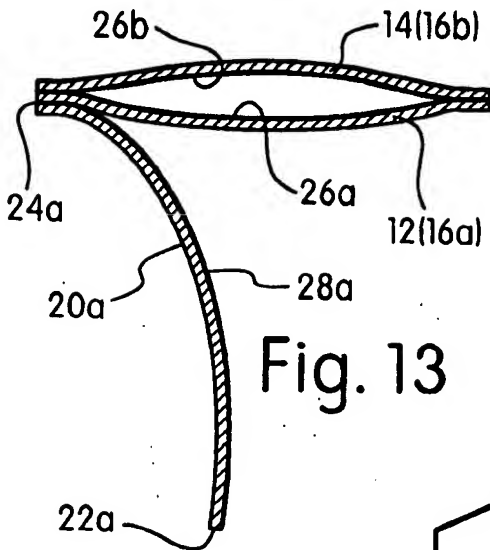


Fig. 13

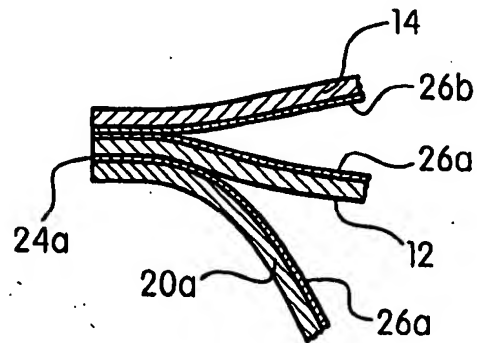


Fig. 14

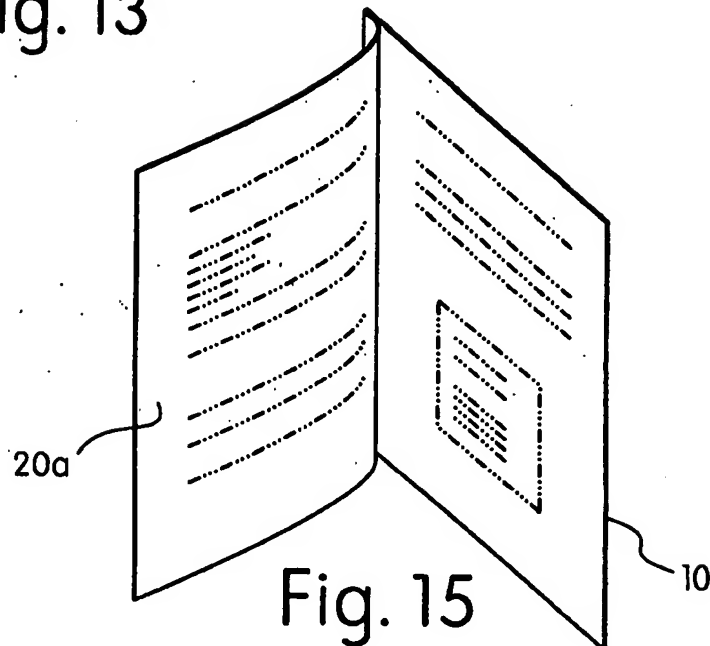


Fig. 15